

Appl. No. 09/941,096
Amdt. Dated October 15, 2004
Reply to Office Action of July 15, 2004

••• REMARKS/ARGUMENTS •••

The Official Action of July 15, 2004 has been thoroughly studied. Accordingly, the changes made herein to the claims, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, each of independent claims 1, 9 and 10 have been changed to recite that the thermoplastic synthetic resin film has substantially flat zones that extend continuously between adjacent ones of the bulgy structural zones.

This change to the independent claims clarifies that the flat zones are part of the thermoplastic synthetic resin film.

Also by the present amendment new dependent claims 11, 13 and 15 have been added which recite that the plurality of bulgy structural zones each have a cross sectional shape that comprises a flat portion and a curved portion that extends outward from the flat portion.

In addition, new dependent claims 12, 14 and 16 have been added which recite that the plurality of bulgy structural zones are non-hollow.

Finally, new dependent claims 17-19 have been added which recite that the plurality of bulgy structural zones have solid cross sectional shapes that comprise opposed curved portions that extend outward from one another.

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Support for each of the changes to the claims limitation can be readily found in applicant's drawings, particularly Figs. 1, 2, 4 and 5.

Entry of the changes to the claims is respectfully requested.

Claims 1, 2, 4, 9 and 10 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,882,769 to McCormack et al.

Claims 1-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over McCormack et al. in view of U.S. Patent No. 5,244,716 to Thornton et al. in view of U.S. Patent No. 4,908,263 to Reed et al.

For the reasons set forth below, it is submitted that all of the pending claims are distinguishable and allowable over the prior art or record and therefore, each of the outstanding prior art rejections should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon McCormack et al. as disclosing:

...a laminate of two or more layers. One of the layers may be elastic. One of the layers may comprise a thermoplastic film and one may comprise a nonwoven fabric. The thermoplastic film may be breathable. See col. 4, line 53 - col. 5, line 65. The two layers are bonded together so that a plurality of bulges form continuously across the surface of the laminate. The bonds may be lines which extend in parallel across the laminate. See figure 1 and also col. 7, lines 1-3.

In relying upon McCormack et al. the Examiner did not indicate the structure of McCormack et al. which reads on applicant's previously claims "substantially flat zones defined between adjacent ones of the bulgy structural zones."

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In looking at Figs. 1, 5 and 6 of McCormack et al. the only reasonable structure that could have read on applicant's recited "substantially flat zones" were portions of the first extensible layer 12. However, this layer corresponds to applicant's claimed "thermoplastic synthetic resin fibrous sheet" which does not include the bulgy structural zones.

In order to more clearly distinguish over McCormack et al. each of applicant's independent claims 1, 9 and 10 have been changed to recite that the thermoplastic synthetic resin film has the substantially flat zones that extend continuously between adjacent ones of the bulgy structural zones.

It is noted that the Examiner has relied upon the manner in which the layers of McCormack et al. are bonded to form "a plurality of bulges." That is the bulges are formed in the second (14) and third (15) layers as depicted.

In order to read on applicant's independent claims as presently amended, McCormack et al. would have to include substantially flat zones in the second (14) and third (15) layers which are shown in the drawings.

There are no substantially flat layers in the second (14) and third (15) layers of McCormack et al. which extend continuously between adjacent ones of the bulgy structural zones.

Accordingly, McCormack et al. fails to anticipate the structure of applicant's claimed invention.

The Examiner has relied upon Thornton et al as teaching a polyurethane film having a specific WVTR.

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This further reliance upon Thornton et al. does not address or overcome the structural differences and distinctions between applicant's claimed invention and McCormack et al.

Accordingly, the combination of McCormack et al. and Thornton et al. does not render applicant's claimed invention obvious under 35 U.S.C. §103.

The Examiner has cited Reed et al. on page 3 of the Official Action as being relied upon in combination with McCormack et al. and Thornton et al.

However, the Examiner has not set forth any specific reliance upon Reed et al. nor any proposed modification of McCormack et al. based upon the teachings of Reed et al.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §102 as anticipating applicant's claimed invention.

Moreover, it is submitted that the Examiner cannot properly rely upon the prior art under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

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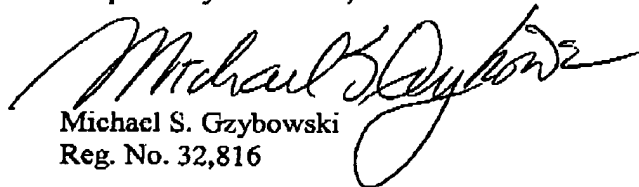
Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicant's patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



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